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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,686	07/31/2003	Brian Bliven	018158-021900US	2703
20350	7590	02/03/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			NGUYEN, DUNG T	
			ART UNIT	PAPER NUMBER
			2828	

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/632,686

Applicant(s)

BLIVEN ET AL.

Examiner

Dung (Michael) T Nguyen

Art Unit

2828

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/17/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 9-11, 13, 16-18, 20, and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juhasz et al. (US5978405) in view of ERG Materials and Aerospace Corporation 11/13/02, p.1-3).

With respect to claims 1, 6, 10-11, 17-18, 20, 24, and 26, Juhasz show in Fig.3 a laser apparatus, comprising: a casing 10 defining a laser chamber cavity, an electrode structure disposed within the laser chamber cavity, the electrode structure having first 102 and second 104 ends disposed adjacent corresponding first and second laser chamber ends (claim 1); a gas circulation mechanism 108 for circulating a gas within the laser chamber cavity. Juhasz lack an elongate baffle disposed in the laser chamber, the baffle adapted to arrest a plurality of particles generated within the chamber and to direct the gas towards the electrode structure and to provide a non-turbulent gas flow around the electrode structure first and second ends. ERG Materials and Aerospace Corporation teaches the baffle

(DUOCEL) adapted to arrest a plurality of particles (p.2, l.2-7) generated within the chamber and to direct the gas towards the electrode structure and to provide a non-turbulent gas flow around the electrode structure first and second ends (p.1, l.24-26). For the benefit of controlling the gas flow in the gas laser system, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Juhasz what is taught by ERG Materials and Aerospace Corporation.

With respect to claims 2-3, 5, 13, 22-23, and 27, ERG Materials and Aerospace Corporation discloses the open-celled foam, the open-celled metal foam, and the open-celled ceramic (p.1, l.2-3).

With respect to claim 4, ERG Materials and Aerospace Corporation discloses the aluminum (p.2, l.11).

With respect to claim 9, Juhasz disclose the excimer laser (col.1, l.11).

With respect to claims 16 and 25, ERG Materials and Aerospace Corporation discloses the baffle attenuating acoustic waves (p.2, l.19-20).

Claims 7-8, 15, 21, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juhasz et al. (US5978405) in view of ERG Materials and Aerospace Corporation 11/13/02, p.1-3) and further in view of the admitted prior art in this application.

With respect to claim 7, Juhasz and ERG disclose all limitations of the claim except for the pre-ionization pins. Prior art teaches the pre-ionization pins (p.1, 1.22). For the benefit of the gas laser operation, it would have been obvious to one having ordinary skill in the art at the time the invention was made to Juhasz and ERG the pre-ionization pins as taught by Prior art.

With respect to claim 8, Prior art discloses the particles comprising a metal (p.1, 1.20-21).

With respect to claims 15, 21, and 28, Prior art discloses the optics package (p.1, 1.25).

Claims 12, 14, 19, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Juhasz et al. (US5978405) in view of ERG Materials and

Aerospace Corporation 11/13/02, p.1-3). Juhasz and ERG disclose all limitations of the claims except for the second baffle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Juhasz and ERG the second baffle, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cullumber (US5729564) in view of ERG Materials and Aerospace Corporation 11/13/02, p.1-3). Cullumber shows in Fig.1-2 an excimer laser 10 comprising: a laser chamber; a lasing gas disposed within the chamber; a pair of lasing electrodes 16 and 18 within the chamber. Cullumber lacks an open-celled metallic foam disposed in the laser chamber so as to collect particles generated in the chamber during firing of the laser. ERG teaches the open-celled metallic foam (p.1, 1.2-3). For the benefit of collecting the particles in the laser chamber, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Cullumber the open-celled metallic foam as taught by ERG.

Claims 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cullumber (US5729564) in view of ERG Materials and Aerospace Corporation 11/13/02, p.1-3) and further in view of D'Souza et al. (US6450641).

With respect to claim 31, Cullumber and ERG disclose all limitations of the claim except for the laser beam for removal of corneal tissue to correct refraction. D'Souza teach the excimer laser beam for removal of corneal tissue to correct refraction (p.3, second column, 1.21-23). For the benefit of the corneal refractive surgery, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Cullumber and ERG the laser beam as taught by D'Souza.

With respect to claim 32, D'Souza disclose the 193nm excimer laser (p.3, second column, 1.21-23).

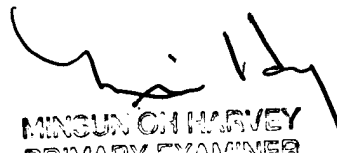
Communication Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung (Michael) T Nguyen whose telephone number is (571) 272-1949. The examiner can normally be reached on 8:30 - 17:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Min Harvey can be reached on (571) 272-1835. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-3329.

Michael Dung Nguyen



MINGUN O. HARVEY
PRIMARY EXAMINER